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OFFICE OF PETITIONS

In re Application of Bremer et al. :
Application No. 09/645,206 : Decision on Petition
Filing Date: August 25, 2000 :
Attorney Docket No. 61607-1300 :

This is a decision on the petition filed July 11, 2006, under 37 CFR 1.181 to withdraw the holding of abandonment of the above-identified application.

The petition is **granted to the extent indicated below**.

A final Office action was mailed April 2, 2004.

Petitioner appealed the Office action.

The Board of Appeals and Interferences mailed a decision on May 31, 2006. The decision affirmed the rejections.

Absent an extension of time pursuant to 37 CFR 1.304(a)(3),¹ petitioner had two months to commence a civil action in District Court under 35 U.S.C. 146 or appeal to the United States Court of Appeals for the Federal Circuit under 35 U.S.C. 141.²

Petitioner did not commence an action or file an appeal or before Monday, July 31, 2006, and no claims had been allowed in the application. Therefore, proceedings on the application terminated on August 1, 2006.³

Petitioner objects to the Notice of Abandonment mailed June 7, 2006, stating the application was abandoned "because the period for seeking court review of the decision has expired and there are no allowed claims." Petitioner correctly asserts the period to seek court review had not expired as of June 7, 2006.

¹ The time may be extended in some circumstances pursuant to 37 CFR 1.304(a)(3).

² See 37 CFR 1.304(a)(1).

³ See 37 CFR 1.197(b).

Since the Notice was premature, the Notice of Abandonment mailed June 7, 2006, is vacated and withdrawn.

A New Notice of Abandonment will be mailed since proceedings on the application terminated on August 1, 2006.

The Office notes application no. 11/464,567 was filed August 15, 2006, and does not have copendency with the instant application. Petitioner may wish to consider filing a petition under 37 CFR 1.137(b) to revive the instant application for copendency.⁴

Technology Center Art Unit 2614 will be informed of the instant decision. Thereafter, the Technology Center's technical support staff will mail a new Notice of Abandonment and will take steps to ensure PALM indicates a date of abandonment of August 1, 2006, rather than June 6, 2006.

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
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Office of Petitions

⁴ An application may be revived simply for copendency. Per 37 CFR 1.137(c), "In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application."